

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

NETLIST, INC.,

Plaintiff,

V.

SAMSUNG ELECTRONICS CO., LTD.,
SAMSUNG ELECTRONICS AMERICA,
INC., SAMSUNG SEMICONDUCTOR,
INC.,

Defendants.

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CIVIL ACTION NO. 2:21-CV-00463-JRG

ORDER ON CERTAIN PRETRIAL MOTIONS

The Court held a hearing in the above-captioned matter on Thursday, January 19, 2023 regarding certain pending pretrial motions filed by Plaintiff Netlist, Inc. (“Netlist”) and Defendants Samsung Electronics Co., Ltd., Samsung Electronics America, Inc., and Samsung Semiconductor, Inc. (together, “Samsung”). (Dkt. Nos. 74, 113, 121, 122, 124, 125, 126, and 130.) This Order memorializes the Court’s rulings on the aforementioned motions as announced from the bench and read into the record. While this Order summarizes the Court’s rulings as announced into the record during the hearing, this Order in no way limits or constrains such rulings from the bench. Accordingly, it is hereby **ORDERED** as follows:

1. Samsung’s Opposed Motion to Stay Pending Inter Partes Review and Ninth Circuit Appeal (Dkt. No. 74)

The Motion to Stay (Dkt. No. 74) was **DENIED**. Accordingly, Samsung's Unopposed Motion for Leave to File a Supplement to Pending Motion to Stay Pending Ninth Circuit Appeal and Inter Partes Review (Dkt. No. 122) was **DENIED AS MOOT**.

2. Netlist's Motion for Leave to Amend Preliminary Infringement Contentions (Dkt. No. 113)

The parties announced they had reached an agreement regarding the Motion for Leave to Amend Preliminary Infringement Contentions (Dkt. No. 113). Samsung shall be allowed an extra two weeks to add any additional arguments necessary in its expert reports for 4H HBM products beyond those that are applicable to the 8H HBM products. The Court approved this agreement.

3. Netlist's Motion to Compel Deposition of Jung Bae Lee (Dkt. No. 121)

The Motion to Compel (Dkt. No. 121) was **GRANTED**. The Court found that there has been a good faith effort to exhaust underlying sources prior to seeking to depose Dr. Jung Bae Lee. The Court **ORDERED** that Dr. Lee be made available for a remote/virtual deposition to be held within two weeks of this ruling. The deposition shall be video recorded and will not exceed two hours, inclusive of any reasonable time consumed by any interpreter.

4. Samsung's Opposed Motion to Compel Production of Testimony from Prior Netlist Litigations Asserting Related Patents Against the Same Category of Accused Products (Dkt. No. 124)

The parties announced they had reached an agreement regarding the Motion to Compel (Dkt. No. 124). The depositions of Dr. Lee, Mr. Chuck Hong, Ms. Gail Sasaki, Mr. Scott Milton, and J.B. Kim will be produced from the ITC proceeding involving Netlist and SK hynix. If Samsung introduces those depositions at trial, Netlist will have the right to counter-designate prior thereto.

5. Netlist's Motion to Compel Production of Documents (Dkt. No. 125)


The parties announced they had reached an agreement regarding the Motion to Compel (Dkt. No. 125). Samsung has represented that the SSI data that was produced is end-sale SSI data. For the purposes of performing a cross check on the transfer pricing, Samsung will produce, for

one DDR4 LRDIMM product, one DDR5 product, and one HBM product, the end-sale pricing for two of Taiwan, Shanghai, or EU subsidiaries.

6. Samsung's Opposed Motion to Strike Netlist's Late Disclosure of Netlist Products Purportedly Practicing the Asserted Patents and Late Disclosure of Netlist's Conception, Reduction to Practice, and Third Party Disclosure Documents (Dkt. No. 126) and Netlist's Opposed Motion for Leave to Amend Preliminary Infringement Contentions (Dkt. No. 130)

The Court **GRANTED** Samsung's Motion to Strike (Dkt. No. 126) and **DENIED** Netlist's Motion for Leave to Amend Preliminary Infringement Contentions (Dkt. No. 130). The Court found that Netlist's late disclosure in mid-November of some 30,000 documents with fact discovery closing on December 22 to be unreasonable. Netlist shall be precluded from relying on its late-produced products purportedly practicing the asserted patents and its conception and reduction to practice documents.

So ORDERED and SIGNED this 3rd day of February, 2023.



RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE